

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8212 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAGANLAL ISHVARLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PJ VYAS for Petitioner
GOVERNMENT PLEADER for Respondent No. 1 to 3.
Resp.No.4 though served absent.

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 12/01/98

ORAL JUDGEMENT (per C.K.Thakker J.)

1. This petition is filed by the petitioner for quashing and setting aside a decision taken at Annexur.C on 25th January 1987 by Collector, Bharuch, in which it was decided that during the pendency of correspondence with the Government and subject to its approval, the

Bharuch Municipality, respondent no.4 will be given possession of the land bearing Final Plot no.27 admeasuring 7041 sq.mt. in lieu of Final Plot no.26 admeasuring 10323 sq.mts.

2. The case of the petitioner was that he owned and possessed land bearing S.No.52/1 situated in Bharuch, State of Gujarat- first respondent herein- issued a notification under Sec.4 of the Land Acquisition Act, 1894 on June 25, 1964 which was published on July 2, 1964. The land was likely to be needed for public purpose for construction of New Civil Hospital. A notification under Sec.6 of the Land Acquisition Act was issued on March 25, 1965. An award was declared by Special Land Acquisition Officer on March 31, 1967. It was asserted by the petitioner that Town Planning Scheme no.1 of Bharuch was introduced on or about July 6, 1977 and the Government sanctioned the said Scheme which was implemented with effect from March 19, 1986. Under the scheme, two plots were given final plot no.26 admeasuring 10323 sq.mts. and final plot no.27 admeasuring 7041 sq.mts. According to the petitioner, final plot no.26 was given to Bharuch Municipality whereas final plot No.27 was allotted to New Civil Hospital. It is alleged by the petitioner that without following procedure prescribed under the Gujarat Town Planning & Urban Development Act, 1976 (hereinafter referred to as "the Act") and under the Gujarat Town Planing & Urban Rules, 1979 (hereinafter referred to as "the Rules"), there was exchange of final plot nos.26 and 27 between Bharuch Municipality on one hand and the State Government on the other. Since no procedure was followed, the petitioner was adversely affected as the land owned and possessed by him was taken over by the Municipality. The petitioner, therefore, has approached this court.

3. Initially notice was issued and after hearing the parties, Division Bench on April 11, 1991 passed the following order:

"Rule. Heard Ld. Advocates appearing for the parties as regards interim relief. In fact of the case, it is directed that the Respondents shall not carry on construction in final plot no.27 of Bharuch Town Planning Scheme No.1 of Bharuch Town so as to cover additional area of vacant land of that plot. It is clarified that the area of land on which actual construction has already been made on that part vertically further construction may be made. It is further clarified that whatever the construction may be

made will be subject to the result of the petition. It is further clarified that it will be open to respondent-Municipality to pursue its proposal for variation in the Town Planning Scheme. If and when the variation in the Town Planning Scheme is sanctioned by the Govt. the parties will be at liberty to move the court for appropriate orders."

To day the matter is called out for final hearing.

4. We have heard Mr.P.J.Vyas, learned counsel for the petitioner and Mr.Udai Bhatt, Assistant Government Pleader for Respondent Nos.1 to 3. Nobody is present on behalf of respondent no.4.

5. Mr.Vyas contended that Section 71 of the Act enjoins on the authority to follow the procedure laid down under the Act. That section enacts that "Notwithstanding anything contained in section 70, a town planning scheme at any time to be varied by a subsequent scheme made, published and sanctioned in accordance with the provisions of this Act. (emphasis supplied)

He submitted that as the said procedure is not followed, variation in Town Planning Scheme was contrary to law and the impugned action taken in pursuance of variation is illegal, unlawful and deserves to be quashed and set aside.

6. To this, affidavit-in-reply is filed by both Collector respondent no.1 as also by Municipality respondent no.4. In affidavit of Collector, it was stated that under the Town Planning Scheme of Bharuch Town final plot no.26 admeasuring 10322 sq.mts. had been assigned to Municipality as neighbouring land. There was also final plot no.27 which was earmarked for Civil Hospital. Both the lands were adjoining to each other. As final plot no.26 was away from main road and since Bharuch Municipality wanted the land on main road so that it would be convenient to the staff as well as to public of Bharuch at large, a request was made to exchange plot no.27 in lieu of plot no.26. Bharuch Nagar Palika passed a resolution no.182 on March 28/29, 1988, and a proposal was submitted to the Chief Town Planner, Government of Gujarat, for variation of the scheme in accordance with Sec.71 of the Act. The resolution was approved on April 12, 1988. Since the scheme was already sanctioned and had come into force in 1986, the procedure under Sec.71 was undertaken and thereafter the action was taken. In this connection in paras 5 and 6, the deponent has

stated:

"5. With reference to paras (6) to (14) of the petition, I say that the scheme is varied under Section 71 of the Act and I say that in this behalf resolution is passed by the Respondent No.4 on 19.4.1988 and advertisement has been published in Bharuch Samachar on 23.4.1987. I further say that another notice has been published on 1.10.1988, in which it has been stated that regarding variation of scheme, intention of the Government has been published on 28.4.1988 in Government Gazette and as per Gujarat Nagar Development and Urban Development Rules, 1979, particularly rule 17, meeting of all concerned persons has been fixed in the premises of Bharuch Nagarpalika on 10.10.1988 and everybody who are interested in the same meeting may attend the same. I say that the Nagarpalika again passed Resolution dated 29.3.1989 and it has been stated that as per Section 42(1) of the Act, the Nagarpalika is prepared to accept the variation scheme and necessary publication may be made and all consequential steps are to be taken in this behalf. I say that in Bharuch Samachar dated 8.4.1989, the necessary advertisement was also published about the same. I say that further, the Nagarpalika also passed a Resolution, dated 14.6.1989 and it has been stated that there is no objection received regarding variation of the Scheme and, therefore, as per Section 48, the Nagarpalika is sending the varied scheme to the Government for variation and sanction. I say that the Administrator, Bharuch Nagarpalika also addressed a letter to the Secretary, Urban Development and Housing Department on 14.6.1989. I further say that the Section Officer, Urban Development and Housing Department, addressed a letter dated 28.8.1989 to the Chief Town Planner, Gujarat State, for obtaining sanction under Section 48(1) of the Act. I say that the Bharuch Municipality had addressed another letter dated 1.1.1990 to the Secretary, Urban Development and Housing Department, in which, it has been stated that the Chief Town Planner has given sanction on 7.1.1989 and requested to sanction the variation under the scheme at an early date.

6. I say that in view of the same, as final Scheme is being varied as per Section 71 of the

Act, after performing requisite formalities as required, under the Act, the petitioner's contention regarding objection to the variation does not arise at this stage. I say that the petitioner has not proved his tenure and title, under reference after producing requisite documentary proof along with the writ petition lies on the petition and he has failed to prove the same. I say that in view of the same, the Honourable High Court may be pleased to dismiss the Writ Petition in limine and discharge the notices issued to the Respondents."

A similar affidavit is filed on behalf of respondent no.4 also. A communication addressed by the Chief Town Planner, State of Gujarat, Ahmedabad dt. 27th January 1988 accepting proposal of the Municipality is also annexed at Annexure.IV to the affidavit-in-reply. It is also contended on behalf of this Municipality that since the land of the petitioner was acquired under the Land Acquisition Act and thereafter the Town Planning Scheme was prepared and varied in accordance with the provisions of the Act, the petitioner had no locus standi either to file a petition or to challenge the exchange between Civil Hospital and Bharuch Municipality.

7. Mr.Vyas contended that no opportunity of hearing was afforded to the petitioner, no notice as contemplated under the Act and Rules was issued and the decision was taken which is in violation of the principles of natural justice.

8. In the affidavit on behalf of the respondents, it was stated that proper procedure was followed. Notice was issued. It was published in the Government Gazette. Objections were invited and the persons who remained present were heard. The petitioner at no time lodged any objection nor remained present. As the decision was taken in accordance with law after observing natural justice, it cannot be said that any illegality has been committed by the authorities and the petition deserves to be dismissed.

9. For the foregoing reasons, there is no substance in the petition and the petition deserves to be dismissed. The petition is accordingly dismissed. Rule is discharged. Interim relief granted earlier stands vacated. In the facts and circumstances, there is no order as to costs.

Dt. 15.1.1997. (C.K.THAKKER J.)

(R.P.DHOLAKIA J.)

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